IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.5232 -M of 2007

DATE OF DECISION: MARCH 6, 2007

Ravi Kiran Singh @ Rinku and another

...PETITIONERS

VERSUS

State of Punjab

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. P.B.S.Goraya, Advocate,
for the petitioners.
Mr.N.S.Gill, AAG, Punjab.

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The petitioners have filed this petition under Section 482 Cr.P.C. whereby they are seeking direction to the trial court to provide last opportunity to them to cross-examine the prosecution witnesses, i.e., PW2, PW3 and PW4, in case FIR No.94 dated 20.6.2003 registered under Sections 325/324/447/34 IPC at Police Station Majitha, Amritsar.

In this case, the petitioners are facing the trial for offences under Sections 325/324/447/34 IPC. On 3.10.2005, two prosecution witnesses (PW2 and PW3) appeared before the court and after recording their examination-in-chief, their cross-examination was deferred. On the next date, the cross-examination of PW3 was partly recorded and thereafter the case was adjourned as the trial court was to be inspected by the District and Sessions Judge, Amritsar. Thereafter, on 29.5.2006, both the witnesses, i.e., PW2-Mukhtiar Singh and PW3-Jaswant Kaur were present in the court. Another witness ASI Mohinder Pal PW4 was also present and his examination-in-chief was recorded,but the counsel for the petitioners did not come present for cross-examination of those witnesses. Thereupon, the trial court observed that the opportunity to cross-examine all those witnesses was given, but they were not cross-examined and their cross-examination be

treated as nil.

Thereafter, the petitioners filed an application for permission to cross-examine those three prosecution witnesses on the ground that when those witnesses were offered for cross-examination, their counsel was busy in some other court, therefore, he could not come in time for cross-examination of those witnesses and the trial court without providing sufficient opportunity to the accused, has ordered to treat the cross-examination of those witnesses as nil. The said application was dismissed by the trial court vide order dated 29.7.2006. Against the said order, the petitioners filed a revision before the Additional Sessions Judge, Amritsar. The same was also dismissed vide order dated 27.11.2006 on the ground that the impugned order was an interlocutory order, therefore, the revision was not maintainable. Hence, this petition.

Counsel for the petitioners contends that PW2, PW3 and PW4 are the material witnesses and in case the petitioners are not allowed to cross-examine those witnesses, a great prejudice will be caused to them. It has been further contended that the absence of the counsel for the petitioners before the trial court on the date fixed was not deliberate or intentional. Even otherwise, the accused petitioners should not be suffered because of non-appearance of their counsel. Counsel contends that in the interest of justice, one opportunity may be granted to the petitioners to cross-examine those three prosecution witnesses.

I have heard the counsel for the parties and gone through the impugned orders as well as the contents of the petition.

It is well settled that the accused has a right to cross-examine the witnesses to elicit the suppressed facts and to expose the discrepancies. The object of cross-examination is to impeach the credibility and the general value of the evidence given by the witnesses. The right to cross-examination is one of the valuable rights of the accused in order to elicit the truth from the witnesses. Though the accused has no right to seek postponement of the cross-examination and the cross-examination should follow the examination-in-chief, but in certain cases, where the counsel for the accused is not present for cross-examining the witnesses when the examination-in-chief is over, then in such a case, the trial Court, in its

discretion, may permit the cross-examination of such witness to be deferred until any witness is examined or re-called for cross-examination. The accused must be given fair and full opportunity to defend himself in a criminal case. The statement of a prosecution witness cannot be used against an accused, who has not been afforded an opportunity to cross-examine the said witness. It is a right which has been given to every accused unless he gives it up voluntarily. This right is not to be ignored or curtailed or circumscribed in any manner. A prosecution witness, who has been tendered for cross-examination by the accused and whom he had either cross-examined or had failed to cross-examine, may still be summoned by the court if the court is satisfied that it is necessary for the purpose of justice. Even Section 311 Cr.P.C. gives wide powers to the court to recall a witness, who has already been examined if his evidence appears to be essential to the just decision of the case. The discretion vested in the court under Section 311 Cr.P.C. has to be exercised judiciously and liberally.

In the instant case, the cross-examination of three material witnesses of the prosecution has been treated as nil as the counsel for the petitioners did not appear in the court at the relevant time, though on the same date an application was filed for permission to cross-examine those three prosecution witnesses. In my opinion, the petitioners, who are the accused in the aforesaid case, should not be suffered because of non-appearance of their counsel at the relevant time for cross-examination of the prosecution witnesses. If the petitioners are not permitted to cross-examine those three material witnesses of the prosecution, a great prejudice will be caused to them. Therefore, keeping in view the interest of justice, this petition is allowed and the impugned orders are set aside, and the trial court is directed to grant one opportunity to the petitioners to cross-examine PW2, PW3 and PW4.

March 6, 2007 (SATISH KUMAR MITTAL)
vkg JUDGE